

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Chris Langer,

Plaintiff,

v.

Heang V. Gov;
Nam Jai Park; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Chris Langer complains of Defendants Heang V. Gov; Nam Jai Park; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who cannot walk and who uses a wheelchair for mobility. He has a specially equipped van with a ramp that deploys out of the passenger side of his van and he has a Disabled Person Parking Placard issued to him by the State of California.

2. Defendant Heang V. Gov owned the property located at or about 8247

1 Rosemead Blvd., Pico Rivera, California, in May 2015.

2 3. Defendant Heang V. Gov owns the property located at or about 8247
3 Rosemead Blvd., Pico Rivera, California, currently.

4 4. Defendant Nam Jai Park owned the J's Ice Cream Parlor ("Ice Cream
5 Shop") located at or about 8247 Rosemead Blvd., Pico Rivera, California, in
6 May 2015.

7 5. Defendant Nam Jai Park owns the J's Ice Cream Parlor ("Ice Cream
8 Shop") located at or about 8247 Rosemead Blvd., Pico Rivera, California,
9 currently.

10 6. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein,
15 including Does 1 through 10, inclusive, is responsible in some capacity for
16 the events herein alleged, or is a necessary party for obtaining appropriate
17 relief. Plaintiff will seek leave to amend when the true names, capacities,
18 connections, and responsibilities of the Defendants and Does 1 through 10,
19 inclusive, are ascertained.

20
21 **JURISDICTION & VENUE:**

22 7. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
24 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 8. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California's Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 10. The Plaintiff went to the Ice Cream Shop in May 2015 to eat and use
7 the restroom.

8 11. The Ice Cream Shop is a facility open to the public, a place of public
9 accommodation, and a business establishment.

10 12. Parking spaces are one of the facilities, privileges and advantages
11 specifically reserved by defendants to persons at the property serving the Ice
12 Cream Shop.

13 13. Unfortunately, although parking spaces were one of the facilities
14 available to patrons of the Ice Cream Shop, there was not a single compliant
15 van-accessible handicap parking space available for persons with disabilities
16 that complied with the Americans with Disability Act Accessibility Guidelines
17 (ADAAG) in May 2015.

18 14. Currently, there are no compliant van-accessible parking spaces
19 designed and reserved for persons with disabilities in the parking lot serving
20 the Ice Cream Shop.

21 15. There is one parking space marked in the parking lot designed for use
22 by persons with disabilities but it measures 96 inches in width and has an
23 access aisle that has a triangle shape.

24 16. Plaintiff, on information and belief, alleges that there used to be a van-
25 accessible parking space designed and reserved for persons with disabilities
26 on the property prior to May 2015.

27 17. Defendants had no policy or procedure in place to make sure that the
28 van-accessible parking space was maintained and remained useable in the

1 parking lot in May 2015.

2 18. Defendants have no policy or procedure in place to make sure that the
3 van-accessible parking space remains useable in the parking lot currently.

4 19. Additionally, the path of travel at the front entrance requires a person
5 to navigate a step for which there is no ramp.

6 20. As a result of not being able to park at this property, plaintiff had to go
7 to another location in the area. Plaintiff was able to eat at another location
8 nearby.

9 21. The plaintiff personally encountered these problems. This inaccessible
10 condition denied the plaintiff full and equal access and caused him difficulty
11 and frustration.

12 22. Moreover, and even though the plaintiff did not personally confront
13 this barrier, the restroom provides a toilet. However, instead of providing two
14 grab bars on adjacent or parallel walls for use by persons with disabilities who
15 need to transfer to the toilet, there was just one grab bar.

16 23. Additionally, the plumbing underneath the sink is not wrapped to
17 protect against burning contact.

18 24. Plaintiff would like to return and patronize the Ice Cream Shop but will
19 be deterred from visiting until the defendants cure the violation.

20 25. Plaintiff travels, eats, and shops and otherwise patronizes businesses in
21 Los Angeles County on a regular and ongoing basis.

22 26. Because of the location of the Ice Cream Shop, plaintiff would like to
23 return.

24 27. The defendants have failed to maintain in working and useable
25 conditions those features required to provide ready access to persons with
26 disabilities.

27 28. The violations identified above are easily removed without much
28 difficulty or expense. They are the types of barriers identified by the

1 Department of Justice as presumably readily achievable to remove and, in
 2 fact, these barriers are readily achievable to remove. Moreover, there are
 3 numerous alternative accommodations that could be made to provide a
 4 greater level of access if complete removal were not achievable.

5 29. Given the obvious and blatant violation, the plaintiff alleges, on
 6 information and belief, that there are other violations and barriers on the site
 7 that relate to his disability. Plaintiff will amend the complaint, to provide
 8 proper notice regarding the scope of this lawsuit, once he conducts a site
 9 inspection. However, please be on notice that the plaintiff seeks to have all
 10 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
 11 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
 12 he can sue to have all barriers that relate to his disability removed regardless
 13 of whether he personally encountered them).

14 30. Additionally, on information and belief, the plaintiff alleges that the
 15 failure to remove these barriers was intentional because: (1) these particular
 16 barriers are intuitive and obvious; (2) the defendants exercised control and
 17 dominion over the conditions at this location and, therefore, the lack of
 18 accessible facilities was not an “accident” because had the defendants
 19 intended any other configuration, they had the means and ability to make the
 20 change.

21
 22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 23 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
 24 defendants (42 U.S.C. section 12101, et seq.)

25 31. Plaintiff repleads and incorporates by reference, as if fully set forth
 26 again herein, the allegations contained in all prior paragraphs of this
 27 complaint.

28 32. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any
 2 place of public accommodation is offered on a full and equal basis by anyone
 3 who owns, leases, or operates a place of public accommodation. See 42
 4 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,
 6 or procedures, when such modifications are necessary to afford
 7 goods, services, facilities, privileges, advantages, or
 8 accommodations to individuals with disabilities, unless the
 9 accommodation would work a fundamental alteration of those
 10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is
 12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 13 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 14 Appendix “D.”
- 15 c. A failure to make alterations in such a manner that, to the
 16 maximum extent feasible, the altered portions of the facility are
 17 readily accessible to and usable by individuals with disabilities,
 18 including individuals who use wheelchairs or to ensure that, to
 19 the maximum extent feasible, the path of travel to the altered
 20 area and the bathrooms, telephones, and drinking fountains
 21 serving the altered area, are readily accessible to and usable by
 22 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

23 33. Any business that provides parking spaces must provide accessible
 24 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
 25 every eight of those accessible parking spaces but not less than one must be a
 26 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
 27 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six
 28 accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

1 34. Here, the lack of a van-accessible parking space is a violation of the
2 law.

3 35. Hot water and drain pipes under lavatories must be insulated or
4 otherwise configured to protect against contact. 1991 Standards § 4.19.4;
5 2010 Standards §606.5.

6 36. Here, the failure to wrap the plumbing underneath the sink is a
7 violation of the ADA.

8 37. For a toilet to be considered accessible under the ADA, there must be
9 two grab bars on walls adjacent to the toilet to assist persons with disabilities
10 to transfer to the toilet. 1991 Standards § 4.16.4; 2010 Standards § 604.5.

11 38. Here, the failure to provide two compliant grab bars is a violation.

12 39. A public accommodation must maintain in operable working condition
13 those features of its facilities and equipment that are required to be readily
14 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

15 40. Here, the failure to ensure that the accessible facilities were available
16 and ready to be used by the plaintiff is a violation of the law.

17 41. Given its location and options, plaintiff will continue to desire to
18 patronize the Ice Cream Shop but he has been and will continue to be
19 discriminated against due to the lack of accessible facilities and, therefore,
20 seeks injunctive relief to remove the barriers.

21
22 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
23 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
24 51-53)

25 42. Plaintiff repleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint.

28 43. Because the defendants violated the plaintiffs' rights under the ADA,

1 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
2 Code § 51(f), 52(a).)

3 44. Because the violation of the Unruh Civil Rights Act resulted in
4 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
5 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
6 55.56(a)-(c).)

7
8 **PRAYER:**

9 Wherefore, Plaintiff prays that this court award damages and provide
10 relief as follows:

11 1. For injunctive relief, compelling defendants to comply with the
12 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
13 Plaintiff is not invoking section 55 of the California Civil Code and is not
14 seeking injunctive relief under the Disabled Persons Act at all.

15 2. Damages under the Unruh Civil Rights Act which damages provide for
16 actual damages and a statutory minimum of \$4,000.

17 3. Reasonable attorney fees, litigation expenses and costs of suit,
18 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

19
20 Dated: January 5, 2016

CENTER FOR DISABILITY ACCESS

21
22 By: 
23 Mark Potter, Esq.
24 Attorneys for Plaintiff
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